


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON WILLIAMS, SR., A/K/A JASON
SENIOR WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74398-COA

FILED

NOV 06 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Jason Williams appeals from a district court order revoking probation and an amended judgment of conviction. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Williams argues the district court erred by revoking his probation without conducting a proper revocation hearing. “Due process requires, at a minimum, that a revocation be based upon ‘verified facts’ so that ‘the exercise of discretion will be informed by an accurate knowledge of the (probationer’s) behavior.’” *Anaya v. State*, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 484 (1972)). “In order to insure that this constitutional standard is achieved,” a probationer is entitled to “[a] preliminary inquiry” and “a formal revocation hearing,” including “an opportunity to appear and speak on his own behalf and to bring in relevant information, an opportunity to question persons giving adverse information, and written findings by the hearing officer.” *Id.* at 122, 606 P.2d at 158. A revocation hearing “must lead to a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation. The [probationer] must have an opportunity to be heard and to show, if he can, that he did not violate the


conditions, or, if he did, that circumstances in mitigation suggest that the violation does not warrant revocation." *Morrissey*, 408 U.S. at 488.


The record in this matter reveals the district court did not conduct a formal revocation hearing. At the hearing, the State explained that it had initially alleged Williams had violated his probation by receiving new charges and for use of marijuana, but it would not seek revocation based on the new charges because the conduct that formed the basis for those charges occurred before Williams was placed on probation. The State therefore informed the district court that it was only seeking to revoke Williams' probation because he had tested positive for marijuana. The district court then reviewed documentation concerning this case, but did not hear witness testimony concerning the violation. The district court took the matter under advisement and set a hearing for two weeks later.

At the next hearing, the parties and the district court discussed whether use of marijuana constituted a violation of Williams' probationary terms because such use was not against State law and was not specifically barred by the terms of Williams' probation. Williams' counsel also stated that Williams denied signing a statement admitting he had used marijuana and argued that the State had not provided any positive test results to the district court or to the defense. Following that discussion and without the presentation of witnesses or evidence, the district court found that Williams had used marijuana and his use violated the terms of his probation because use of marijuana violates federal law. The record demonstrates that the district court did not give Williams the opportunity to speak on his own behalf, to explain the circumstances surrounding his violations, or to present any mitigating factors not addressed by his counsel.

Based on the record before this court, we conclude Williams' due process rights were violated. The record demonstrates the district court did not conduct the formal revocation hearing that due process requires, because it did not consider witness testimony concerning the alleged violation and it did not give Williams the opportunity to speak on his own behalf during the hearing. We conclude that the error was not harmless because Williams was not given the opportunity to explain the circumstances surrounding the violations or present any mitigating factors not addressed by his counsel. See *Morrissey*, 408 U.S. at 488; *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973). Therefore, we conclude that Williams is entitled to a new probation revocation hearing, before a different district court judge, during which Williams is afforded a meaningful opportunity to be heard.¹ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

¹Because we conclude that Williams is entitled to a new probation revocation hearing before a different district court judge, we need not address his other contentions raised on appeal.

cc: Hon. Linda Marie Bell, Chief Judge
Hon. Douglas Smith, District Judge
Mayfield, Gruber & Sheets
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk